

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEBORAH LYNN BONNER,

Defendant-Appellant.

UNPUBLISHED

May 20, 2004

No. 243333

Oakland Circuit Court

LC No. 01-181492-FH

Before: Owens, P.J. and Kelly and R.S. Gribbs*, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of possession with intent to deliver more than 50 and less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession of marijuana, MCL 333.7403(2)(d). The trial court sentenced defendant to seven to twenty years in prison for the possession with intent to deliver cocaine conviction and 265 days in prison for the possession of marijuana conviction. We affirm.

Defendant claims there was insufficient evidence to sustain her conviction of possession with intent to deliver cocaine. We disagree. A challenge to the sufficiency of the evidence is reviewed de novo in a light most favorable to the prosecution to determine whether any rational factfinder could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of possession with intent to deliver are: (1) the recovered substance is cocaine; (2) the cocaine was in a mixture weighing more than 50 and less than 225 grams; (3) the defendant was not authorized to possess the substance; and (4) the defendant knowingly possessed the cocaine with intent to deliver. MCL 333.7401(2)(a)(iii); *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). Intent to deliver may be proven by circumstantial evidence and may be inferred from the amount of a controlled substance possessed by the defendant or from the way the substance is packaged. *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748, amended 441 Mich 1201 (1992). Because of the difficulty in proving an actor's state of mind, minimal circumstantial evidence is sufficient to prove intent. *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998). "Delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there

*Former Court of Appeals Judge, sitting on the Court of Appeals by assignment.

is an agency relationship. MCL 333.7105(1); *People v Schultz*, 246 Mich App 695, 703; 635 NW2d 491 (2001).

Defendant's trial testimony established that she knowingly possessed cocaine. Further, there was testimony from a law enforcement narcotics expert that the large amount of cocaine defendant possessed (sixty-eight grams) was indicative of an intent to deliver for monetary gain. Thus, there was sufficient testimony to sustain defendant's conviction of possession with intent to deliver more than 50 and less than 225 grams of cocaine.

Defendant argues on appeal that she was simply holding the cocaine temporarily and planned on returning it to her friend, Gregory Hicks but testimony to this effect does not exonerate defendant. By admitting that she intended to give the cocaine back to Hicks, defendant established her intent to deliver cocaine within the meaning of the statute as it constitutes a "transfer from one person to another." Viewed in a light most favorable to the prosecution, the evidence supports defendant's conviction.

Defendant next argues that the trial court erred in instructing the jury on aiding and abetting. Because the evidence supported the theory that defendant aided and abetted the driver of the car in possessing with the intent to deliver more than 50 and less than 225 grams of cocaine, the trial court did not err.

We review claims of instructional error de novo. *People v Lowery*, 258 Mich App 167, 173; 673 NW2d 107 (2003). The trial court must instruct the jury as to the applicable law, and fully and fairly present the case to the jury in an understandable manner. *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991). The instructions must include all elements of the crime charged and must not exclude consideration of material issues, defenses and theories for which there is evidence in support. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

One who procures, advises, aids or abets in the commission of a crime may be convicted as if that person directly committed the offense. MCL 767.39; *People v Mass*, 464 Mich 615, 628; 628 NW2d 540 (2001). To convict a defendant of aiding and abetting, the prosecutor must show that (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *People v Smielewski*, 235 Mich App 196, 207; 596 NW2d 636 (1999).

The evidence presented at trial supported the instruction given. First, there was ample evidence from which the jury could have rationally concluded that Hicks possessed cocaine with the intent to deliver. Defendant testified that the sixty-eight grams of cocaine belonged to Hicks. Hicks was found in possession of two cell phones, two pagers, two strainers, a digital scale with cocaine residue on it and individual baggies which an expert identified as possessions likely belonging to a drug dealer. And Hicks' intent to deliver can be inferred from the large amount of cocaine that he gave to defendant to hold. *Wolfe, supra* at 524.

There was also sufficient evidence that defendant aided and abetted Hicks in the commission of his crime. Defendant testified that she knew it was cocaine that Hicks handed her

to hold. While defendant stated that she did not know how much cocaine was given to her, witnesses testified that there were four balls of cocaine, the largest one being the size of a tennis ball, which supports the conclusion that defendant must have known the amount was substantial. Defendant testified that after the police stopped her friend's car, she moved the cocaine from her pants pocket to her waistband. She further testified that she attempted to secrete the cocaine in the police car after she was arrested. Where a defendant claims that the drugs found did not belong to her, she would be guilty of aiding and abetting if she assisted in concealing the drugs. *People v DeLeon*, 110 Mich App 320, 325; 313 NW2d 110 (1981), rev'd on other grds 414 Mich 851 (1982). Therefore, we conclude there was ample evidence to support the instruction given.

Affirmed.

/s/ Donald S. Owens
/s/ Kirsten Frank Kelly
/s/ Roman S. Gribbs